IN THE HIGH COURT OF BOMBAY AT GOA

CRTIMINAL WRIT PETITION NO. 14 OF 2004

Samir, S/O Cyril Carvalho,
Central Jail Aguada,
Bardez-Goa. ... Petitioner

versus

1. State of Goa,
through Public Prosecutor.

2. Superintendent of Central
Jail, Aguada, Goa. ... Respondents

Mr. Somnath Karpe, Advocate under the Legal Aid Scheme for the Petitioner.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM : P. V. HARDAS &
D. G. KARNIK, JJ.

DATE : 21ST APRIL, 2004.

ORAL JUDGMENT(PER P. V. HARDAS, J.)

This Petition has been filed by the Petitioner through Jail. Mr. Somnath Karpe has been appointed as a Counsel under the Legal Aid Scheme to represent the Petitioner before us. In the Petition, the Petitioner has prayed for premature release. According to the Petitioner, on 30th November, 1994, he was convicted for an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo Rigorous Imprisonment for 10 years and to

pay fine of Rs.1,00,000/-, in default to undergo a sentence of Rigorous Imprisonment for 1 year in the event of non payment of the fine. The conviction and the sentence of the Petitioner has been confirmed in an Appeal by the Division Bench of this Court and subsequently even by the Apex Court which dismissed the Special Leave Petition filed by the Petitioner. According to the Petitioner, he has undergone the substantive sentence of 10 years and is undergoing a default sentence of 1 year on account of non payment of the fine. A grievance is made by the Petitioner that no work was provided to him otherwise he would have earned money and would be able to pay his fine of Rs.1,00,000/-. The Petitioner has sought his premature release on account of his poverty and ill health of his mother.

2. Mr. Somnath Karpe, learned Counsel appointed under the Legal Aid Scheme on behalf of the Petitioner who has very ably argued the Petition has very fairly brought to our notice Section 32A of the Narcotic Drugs and Psychotropic Substances Act, 1985, which according to the learned Counsel on behalf of the Petitioner debars the conviction under the Narcotic Drugs and Psychotropic Substances Act from seeking premature release. This is also what the Respondents have stated that the case of the Petitioner cannot be considered by

the Advisory Board for consideration of premature release in view of Section 32A.

3. In view of the statutory prohibition which is brought to our notice according to us, no relief at all can be granted to the Petitioner. The Petitioner is not entitled to seek his premature release. Further, when the statute prohibits him in granting such relief, the Court if it grants the relief it would amount to reviewing the sentence which has been imposed on the Petitioner by the Court.

4. In view of this, we see no substance in the Petition and the Petition is dismissed. Rule discharged with no order as to costs. Copy be sent to the Petitioner.

P. V. HARDAS, J.

D. G. KARNIK, J.

RD.